



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0184; FRL-9996-27-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology State Implementation Plan for Volatile Organic Compounds under the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the District of Columbia (the District). The District's SIP revision satisfies the volatile organic compound (VOC) reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (NAAQS). The District will address RACT for nitrogen oxides (NO_x) in a separate SIP submission. The District's RACT submittal for the 2008 ozone NAAQS includes certification that for certain major sources, previously adopted VOC RACT controls in the District's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; a listing of the Control Techniques Guidelines (CTGs) already adopted into the District's SIP, and a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA. The District's SIP submittal also includes an update to the 2002 Mobile Equipment Repair and Refinishing (MERR) rule to incorporate the Ozone Transport Commission's (OTC) 2009 Motor Vehicle and

Mobile Equipment Non-Assembly Line Coating Operations regulations (MVMERR) rule adopted by the District in 2016. EPA is addressing the 2009 MVMERR rule in a separate rulemaking action as it is not related to the 2008 VOC RACT SIP revision and does not impact EPA's proposed approval. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2019-0184 at <https://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, Planning & Implementation Branch (3AD30) Air & Radiation Division, U.S. Environmental Protection

Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2036. Mr. Gregory A. Becoat can also be reached via electronic mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION: On August 29, 2018, the District of Columbia Department of Energy and Environment (DOEE) submitted a SIP revision to address all the RACT requirements for VOCs set forth by the CAA under the 2008 8-hour ozone NAAQS (the 2018 RACT Submission). The DOEE also submitted as an amendment to the SIP-approved 2002 MERR rule the updated 2009 MVMERR rule. As previously mentioned, the 2009 MVMERR rule will be addressed in a separate rulemaking notice.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between VOCs and NO_x in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_x emission sources to achieve emission reductions in moderate or more serious ozone nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO_x emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.¹ Section 172 of the CAA sets forth general requirements for SIPs in nonattainment areas, including a requirement that SIPs must include reasonably available control

¹ See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, "Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas." *see also* 44 FR 53761, 53762 (September 17, 1979).

measures (RACT) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. CAA section 172(c)(1). Part D, subpart 2 of the CAA sets forth additional provisions for ozone nonattainment areas. CAA sections 181 – 185B. Sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate (or worse) ozone nonattainment areas to implement RACT controls on all stationary sources and source categories covered by a CTG document issued by EPA, and on all major sources of VOC and NO_x emissions located in the area. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_x or VOC above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. See “major stationary source” in CAA sections 182(c), (d), (e), 184(b) and 302. EPA’s CTGs establish presumptive RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs) primarily for NO_x source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. Section 183(c) of the CAA requires EPA to revise and update CTGs and ACTs as the Administrator determines necessary. EPA issued 11 new CTGs from 2006 through 2008 for a total of 44 CTGs issued since November 1990. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Section 184(a) of the CAA established a single ozone transport region (OTR), comprising all or part of 12 eastern states and the District.² The District is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all

² Only a portion of the Commonwealth of Virginia is included in the OTR.

sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tons per year (tpy) or more of VOCs shall be considered a major source and subject to the requirements which would be applicable to major stationary sources as if the area was classified as a moderate nonattainment area. A major source in a moderate nonattainment area is defined by section 302(j) as any stationary source that emits or has the potential to emit 100 tpy or more of any air pollutant, including NO_x or VOC. Section 182(f) extends the SIP requirements for major sources of VOCs to major sources of NO_x, as defined in sections 302 and 182(c), (d), and (e).

B. The District of Columbia's History

The District has been subject to the CAA RACT requirements because of previous ozone designations. The District was designated as a Serious 1-hour ozone nonattainment area. On January 24, 2003, the District's nonattainment classification was "bumped up" from Serious to Severe for the 1-hour NAAQS and the District was required to submit RACT evaluations on point sources with a potential to emit (PTE) 25 tpy for either VOCs or NO_x (68 FR 3410).

Revisions to the District's VOC RACT provisions to redefine major source thresholds were adopted into the SIP on December 28, 2004 (69 FR 77647) and the final attainment demonstration for the 1-hour NAAQS was approved on March 13, 2005 (70 FR 25688).

Under the 1997 8-hour ozone NAAQS, the District was designated as a Moderate nonattainment area. As a result, the District continued to be subject to the CAA RACT requirements. 69 FR 23858, 23931 (April 30, 2004). The District promulgated its RACT regulations, certifying that the previously adapted RACT controls approved under the 1-hour ozone NAAQS continued to represent RACT under the 1997 8-hour ozone standard, and that no facilities existed in the District for several remaining CTG categories. EPA approved the SIP revision on June 16, 2009

(74 FR 28447).

Under the 2008 8-hour ozone standard, EPA designated the District as a marginal nonattainment area. As part of the OTR, the District must, at a minimum, implement more stringent moderate area RACT requirements for: (1) all categories of VOC or NO_x sources covered by a CTG; (2) all other major stationary sources of VOC or NO_x located in the area. Section 182(b)(2). For the District's 2008 VOC RACT analysis, despite classification as a marginal nonattainment area, the OTR major source thresholds of 50 tpy for VOCs and 100 tpy for NO_x apply. Sections 184(b)(2), 182(f)(1).

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS, as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). 80 FR 12264, codified at 40 CFR Part 51, subpart AA. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In the preamble of the proposed rule, EPA stated that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category. 78 FR 34178, 34192. Stated differently, states can meet the RACT requirements either through (1) a certification that previously adopted RACT controls in their SIP revisions approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS; (2) through the adoption of new or more stringent regulations or controls that represent RACT control levels; or (3) a negative declaration if there are no source categories

subject to certain CTGs within the nonattainment area in lieu of, or in addition to, a certification. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level.

II. Summary of SIP Revision

On August 29, 2018, the DOEE submitted a SIP revision to address all the VOC RACT requirements set forth by the CAA for the 2008 8-hour ozone NAAQS. Specifically, the District's 2018 RACT Submission includes: (1) a certification that for certain major sources, previously adopted VOC RACT controls in the District's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) a listing of the CTGs already adopted into the District's SIP, and (3) a listing of those categories of sources subject to CTGs which do not exist in the District and the location of prior negative declarations previously submitted and approved by EPA.

The District's Regulations and Statutes, under DMCR Subtitle A (Air Quality), Chapter 7 – Volatile Organic Compounds, contain the VOC RACT controls that were implemented and approved into the District's SIP under the 1-hour and 1997 8-hour ozone NAAQS. The District is certifying that these regulations, all previously approved by EPA into the SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources of

VOCs and CTG-covered sources of VOCs. The District also submitted negative declarations for those sources covered by CTGs and ACT guidelines that have not been adopted due to no affected facilities in the District in their review of applicable 2008 8-hour ozone RACT requirements. Additionally, the District conducted a RACT analysis for each major non-CTG stationary source of VOC. For the 2008 8-hour ozone NAAQS, the District determined that there were three major stationary sources with a PTE of 50 tpy or more of VOCs. The District evaluated the equipment at these sources to determine whether there was any equipment emitting VOCs that were not covered by RACT level controls or a CTG. For equipment at these sources not covered by RACT controls or CTGs, the District determined that the actual emissions of VOCs from this equipment were so small that it would not be cost-effective (economically feasible) to apply controls.

More detailed information on the District's 2018 VOC RACT submission; as well as a detailed summary of EPA's review of the submission, can be found in the Technical Support Document (TSD) for this action, which is available online at www.regulations.gov, Docket number EPA-R03-OAR-2019-0184.

III. Proposed Action

EPA has reviewed the District's 2018 RACT submission and is proposing to approve it as a SIP revision. The District has met the RACT requirements for the 2008 8-hour ozone NAAQS as set forth by sections 182(b) and 184(b)(2) of the CAA. The District's SIP revision satisfies the 2008 8-hour ozone NAAQS RACT requirements through (1) certification that previously adopted RACT controls in the District's SIP for major, non-CTG VOC sources that were approved by EPA under the 1-hour ozone and 1997 8-hour ozone NAAQS continue to be based on the currently available technically and economically feasible controls, and that they continue to

represent RACT; (2) a listing identifying those CTGs which the District has already adopted into its SIP, and (3) a listing of the negative declarations previously submitted by the District for those source categories covered by CTGs that do not exist in the District. EPA finds that the District's 2018 RACT Submission demonstrates that the District has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of VOC, it implements RACT with respect to all sources of VOCs covered by a CTG issued prior to July 20, 2014, and has submitted or previously submitted negative declarations for those VOC sources covered by CTGs and ACTs that are not found in the District. EPA is soliciting public comments on the issues discussed in this document relevant to VOC RACT requirements for the District for the 2008 ozone NAAQS. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source-specific RACT determinations under the 2008 8-hour ozone NAAQS for certain major sources of VOC emissions. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, the District's 2008 8-hour ozone RACT SIP revision does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the District, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: June 26, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

[FR Doc. 2019-14628 Filed: 7/10/2019 8:45 am; Publication Date: 7/11/2019]